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POST-CONFIRMATION TRUST

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

WAYNE BERRY, a Hawaii citizen;

Plaintiff,

vs.

HAWAIIAN EXPRESS SERVICE,  
INC., et al.,

Defendants.

) CIVIL NO. CV03-00385 SOM-LEK

) (Copyright)

) SUPPLEMENTAL DECLARATION

) OF LEX R. SMITH

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SUPPLEMENTAL DECLARATION OF LEX R. SMITH

I, LEX R. SMITH, under penalty of perjury, state as follows:

1. I am an attorney licensed to practice law before all of the State and Federal Courts in the State of Hawaii and am one of the attorneys representing Defendant POST-CONFIRMATION TRUST for Fleming Companies, Inc. in this case.

2. I make the following declaration based on personal knowledge unless otherwise indicated.

3. On December 30, 2005, I met with Plaintiff's counsel, Timothy J. Hogan to discuss stipulations to the authenticity of trial exhibits. Also present at that meeting were my associate, Thomas H. Yee, and counsel for the Fleming employee defendants, Lyle Hosoda.

4. During the course of discussions with Mr. Hogan, Mr. Hogan stated that if I would not stipulate to the authenticity of the numerous email exhibits, he would call me testify as a witness and "boot up" the disk drive containing the e-mails in court.

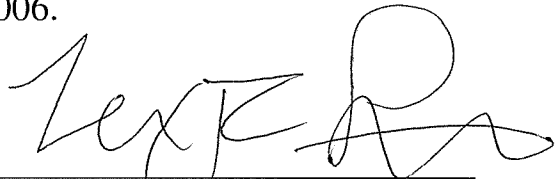
5. Mr. Hogan also warned that I would not want to have him "boot up" and display the contents of the disk drive in front of a jury.

6. When asked why by Mr. Hosoda, Mr. Hogan responded that he had

found “evidence of child pornography” on the disk drive.

I declare under penalty of perjury that the statements made herein are true and correct to the best of my knowledge, information and belief.

DATED: Honolulu, Hawaii, January 9, 2006.

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LEX R. SMITH